IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 3490 of 2007(M)

PETITIONER:

SOUMYA G. MUNDACKAL,
PALACKATHAKID P.O., KUNNAMTHANAM.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY, DEPARTMENT OF HEALTH AND
FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE REGISTRAR, KERALA NURSES AND
MIDWIVES COUNCIL, THIRUVANANTHAPURAM.

3. THE MANAGING DIRECTOR, N.I.S.A. SCHOOL
OF NURSING, BANDIYOD, MANGALAPADY P.O.,
KASARAGOD, KERALA.

BY FOR R2, ADV. SRI.N.RAGHURAJ, SC, TCMC & KNMC
FOR R1, ADV..I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C)No.3490 Of 2007

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Dated this the 13th day of February, 2007.

J U D G M E N T

Heard.

2. The petitioner is the daughter of a coolie, whose annual income is reflected in Ext.P1 application form as Rs.5,000/-. She passed Pre-Degree in first chance. She applied for admission for the General Nursing and Midwifery Integrated Course in the 3rd respondent-N.I.S.A. School of Nursing and was called upon to attend interview on 28.10.06. However, Ext.P2 shows that she was suffering from Chickun Guniya and was under treatment of a registered Homeopathic Physician, who issued Ext.P2 dated 15.10.06. Accordingly, she could not appear on the date of interview, which obviously was to admit her for the course, subject to her producing the originals of her testimonials. She, thereafter, approached the college which, in turn, addressed Ext.P4 letter dated 7.11.06 to the 2nd respondent-Council requesting permission to accommodate the petitioner and

another who could not appear for the interview on similar reasons. The receipt of Ext.P4 is not denied by the 2nd respondent. Since no action followed on Ext.P4, petitioner submitted Ext.P3 application to the Minister for Health and Family Welfare in the Government of Kerala who forwarded it to the 3rd respondent for appropriate action, with her recommendations.

3. The legal impediment that is now pointed out by the learned counsel for the 2nd respondent-the Kerala Nurses and Midwives Council is that the Diploma in General Medicine and Midwifery Courses is provided by the nursing schools governed by Travancore-Cochin Nurses and Midwives Act 1953 and General Nursing and Midwifery Course in Private Nursing Schools (Selection of Candidates) Regulations, 2005, issued by the Kerala Nurses and Midwives Council in exercise of powers with subsection 1 of Section 36 of Kerala Nurses and Midwives Act, 1953 provides in Regulation 16, cut off date for commencement of course and closure of admission. The closure of admission for the relevant year going by the said regulation is 31st October, 2006.

4. Obviously, the date given by the 3rd respondent for the petitioner to appear for the interview in anticipation for the admission is 28th October 2006. Provisions of the Regulation, fixing the last date of admission would stand, having regard to the objective sought to be achieved by the prescription of the last date for admission. At the same time, every statute law, subordinate legislation, rules and regulations are made by man for the benefit of man and have to be interpreted, taking into consideration such exigencies and circumstances which can be termed as 'act of God' or *force majeure*. In doing so, the endeavour is to find out whether justice to the individual could be ensured within the format of law.

5. As already noticed, by Ext.P4 the 3rd respondent had requested the 2nd respondent on 07.11.06 for permission to accommodate the petitioner who, obviously, stood selected for all practical purposes and was entitled to be admitted on 28.10.06 on which date she was to appear for the interview. If Ext.P4 is given appropriate weightage, the delay in the admission would be only about seven days away from the cut off date fixed by the 2nd

respondent. Though there was no representation by the candidate herself before the 2nd respondent, taking into consideration Exts.P3,P4 and P2 and the fact that the petitioner was found qualified for being considered for admission, it would be appropriate that the 2nd respondent permits the 3rd respondent to admit the petitioner acting on Ext.P4 and considering and condoning any absence of the petitioner on such conditions as the 2nd respondent may fix, to ensure that appropriate instructions in lectures and practicals, if any, which would have been lost until the date of the petitioner commences attending classes, is appropriately managed. It is directed that the aforesaid shall be done by the 2nd respondent by issuing necessary orders at the earliest upon the receipt of a copy of this judgment. It is clarified that the aforesaid directions are issued on the very peculiar facts and circumstances of the case as already noticed and is not a precedent to be so taken, by the 2nd respondent.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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